



An
Coimisiún
Pleanála

Inspector's Report ACP-322885-25

Question

Whether the construction of a boundary wall to the side of the dwelling is or is not development and/or is or is not exempted development.

Location

49 The Crescent, Broadale,
Maryborough Hill, Co. Cork

Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R94925

Applicant for Declaration

Ray Murphy

Planning Authority Decision

Is not exempted development

Referral

Referred by

Ray Murphy

Owner/ Occupier

Ray Murphy

Observer(s)

N/A

Date of Site Inspection

26th October 2025

Inspector

Sarah O'Mahony

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1.0 Site Location and Description

- 1.1. The site is situated in a housing estate called 'Broadale', in the Maryborough area of Douglas/Rochestown, County Cork. The N28 is situated 500m to the west while the Douglas river estuary is situated 1.3km to the north. Broadale neighbourhood centre is also situated 240m west of the site at the entrance to the housing estate.
- 1.2. The site comprises an area of public open space situated at the side of a semi-detached dwelling, no.49 The Crescent, Broadale. The area of open space comprises a narrow linear area finished with grass and two ornamental trees situated between a public footpath and the side boundary wall of the rear open space attached to no. 49.
- 1.3. The dwelling is the first in a row of pairs of semi-detached dwellings. There is another similar row situated to the rear in a back-to-back arrangement. In this regard, the area of open space in question is situated to the side of the private open space associated with 2no. dwellings, no. 49 and no. 48, however the site and area subject of this referral only relates to the land situated adjacent to no. 49 at the west of the open space.
- 1.4. There is a road situated along the north of the footpath and open space which provides access to the housing estate, and another row of dwellings situated alongside the road facing the open space and subject site.

2.0 The Question

- 2.1. The applicant provided the following in the application form under the heading of question/declaration details:

'I wish to knock the existing side on my property and rebuild, to the same specification, at the boundary of my site as shown on the attached Ordnance Survey Map. Please confirm that this can be done without planning permission and advise if there are any requirements that I should be aware of before proceeding. It is not my intention to increase or alter the existing vehicular entrance.'

2.2. The Planning Authority reframed the question as follows: Is the construction of a boundary wall to the side of the dwelling development, and if so, is it exempted development.

2.3. I consider it appropriate to also include the proposed element of demolition and effective enclosure of additional open space as referred to by the applicant.

Therefore, the question I have reworded is as follows:

Does the demolition of a boundary wall to the side of a dwelling and construction of a new boundary wall enclosing an adjacent area of public open space within the private open space of the dwelling comprise development, and if so, is it exempted development?

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The Planning Authority declared that having regard to:

- Sections 2,3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018,

the construction of a boundary wall to the side of the dwelling at no. 49 The Crescent, Broadale, Maryborough Hill, Cork **is development** and is **not exempted development**.

3.1.2. The basis for this decision is as follows:

- the development would consist of the fencing or enclosure of land habitually open to or used by the public and therefore the following article 9 restriction applies:

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would

(b) (x) consist of the fencing in or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, riverbank or other place of natural beauty or recreational utility.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Report considered a range of matters including planning history, the context and location of the site and the legislative context.
- It considered the proposal comprises works which comprise development.
- It considered that development fell within the provisions of Class 5, Schedule 2, Part 1 but that the restriction of article 9(a)(x) applies as providing a boundary wall in the proposed position would result in the enclosure of land habitually open to or used by the public and therefore is not considered to be exempt.
- Environmental Impact Assessment and Appropriate Assessment issues were both screened out.

3.2.2. Other Technical Reports

- None

4.0 Planning History

- None on the subject site.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Cork City Development Plan 2022-2028 (referred to hereafter as the CDP). The site is zoned ZO-01 Sustainable Residential Neighbourhoods which has the following objective:

“To protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.”

5.1.2. Paragraph ZO 1.2 states:

“Development in this zone should generally respect the character and scale of the neighbourhood in which it is situated. Development that does not support the primary objective of this zone will be resisted.”

5.2. **Natural Heritage Designations**

5.3. The site is situated 1.3km south of Cork Harbour Special Protection Area and the Douglas River Estuary proposed Natural Heritage Area.

6.0 **The Referral**

6.1. **Referrer's Case**

- Incorrect application of article 9(1)(a)(x) as:
 - the site does not comprise a means of access, and
 - in the context of land ‘open or used by the public for recreational purposes’ it would not be reasonable to contend that construction of the wall would lead to the public being deprived of land that they had used for recreational purposes.
- The referrer/applicant maintains the site.
- Precedence of similar case within the same housing estate which was deemed exempt.

6.2. **Planning Authority Response**

- No additional comments

6.3. **Further Responses**

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended ('the Act').

7.1.1. Section 2(1) of the Act provides the following definition:

- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

7.1.2. Section 3(1) of the Act states the following in respect of "Development"

- In this Act, 'Development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structure or other land.

7.1.3. Section 4(1) sets out various forms and circumstances in which development is exempted development for the purposes of this Act.

7.1.4. Section 4(2)(a)(i) *"The Minister may by regulations provide any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –*

- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or"*

7.1.5. Section 4(3) states that *'A reference in this Act to exempted development shall be construed as a referred to development which is-*

- (a) Any of the developments specified in subsection (1), or*
- (b) Development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.'*

7.1.6. Section 4(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

7.1.7. Section 177U(9) In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate,

conduct a screening for appropriate assessment in accordance with the provisions of this section.

7.2. Planning and Development Regulations, 2001, as amended ('the Regulations')

7.2.1. Article 6 (1) - Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. The following classes of development are listed:

Column 1 Description of Development	Column 2 Conditions and Limitations
Development with the curtilage of a house ... Class 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.

7.2.3. Article 9(1)(a) sets out various restrictions on class of development to which Article 6 relates that would otherwise be exempted development. The following sub-article is listed:

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

7.3. Precedent

7.3.1. I have examined the An Coimisiún Pleanála referrals database and note the following:

- 318396: Whether the erection of gate from private to public space and change of use from publicly accessible open space to private use is or is not development or is or is not exempted development. The Board concluded that:

(a) The erection of a gate in excess of 2m from private to public open space is development and is not exempted development

(b) and the change of use from publicly accessible open space to private use is a material change of use that is development and is not exempted development as it would consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes

- 313930: Whether the construction of a fence, a pedestrian gate and a vehicular gate on the road is or is not development and is or is not exempted development.

The Board concluded that the proposed development

(a) Does constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000 as amended

(b) Does come within the scope of Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, and

(c) The development would not be exempted development, having regard to Article 9(1)(a)(x) as it would constitute the construction of a fence, a

pedestrian gate and a vehicular gate on the road which encloses land habitually open to or used by the public during the 10 years preceding the construction of the fence, a pedestrian gate and a vehicular gate on the road for recreational purposes or as a means of access to any riverbank or other place of recreational utility.

7.3.2. The referrer/applicant also made reference to the following declaration made by Cork City Council within the same housing estate in 2020:

- R577/20: The construction of a boundary wall the side of the dwelling at 11 The Circle, Broadale, Maryborough Hill, Douglas, Cork **is development and is exempted development.**

8.0 **Assessment**

8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposed development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.2. **Is or is not development**

8.2.1. Demolition and construction of a wall constitutes 'works' as defined in section 2(1) of the Planning and Development Act, 2000, as amended, and comes within the definition of development as set out in section 3(1) of the said Act.

8.3. **Is or is not exempted development**

8.3.1. Article 6(3) of the Planning and Development Regulations 2001, as amended makes provision for classes of development set out in Part 3 of the Regulations to be exempted development subject to any provisions of Article 9. Class 5 of Schedule 2 of Part 1 of the Regulations provides that the construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or

mass concrete comprises exempted development subject to the conditions and limitations outlined above.

- 8.3.2. The referrer/applicant stated in the application form that it is intended to construct the new wall to the same specification as the existing wall which is a 1.8m high blockwork wall with dashed render and red brick capping. This complies with the requirements for the construction and finish of the wall as required in column 1 of Class 5 as well as the conditions and limitations set out in column 2 of Class 5.

8.4. Restrictions on exempted development

- 8.4.1. The proposed development would transfer a portion of public open space to private open space. The application documents suggest the referrer/applicant owns the open space in question and that the developer, when constructing the housing estate in 1991, erected the wall in a location which is not the registered boundary of the dwelling as identified in a submitted Land Direct map.
- 8.4.2. The area of land in question is a narrow linear area measuring approximately 65m² and finished with grass and some mature trees. It is situated directly adjacent to a public footpath and road. It is not enclosed in any manner and therefore comprises land which is habitually open to the public.
- 8.4.3. I note in particular that the wording of article 9(1)(a)(x) restricts development which would *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility.*
- 8.4.4. The 'or' emphasised in the above extract clarifies that the land does not specifically have to be used actively by the public for recreational purposes, it simply has to be open and accessible for such purposes, which is the case in this instance. The land has been habitually open to the public since its construction and general occupation of the surrounding units in the early 1990s which exceeds the ten year timeframe and therefore the restriction applies.

9.0 Appropriate Assessment

9.1. Screening

- 9.2. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 9.3. The site is situated 1.3km south of Cork Harbour Special Protection Area.
- 9.4. The proposed development seeks to demolish an existing boundary wall and construct a new boundary wall enclosing an adjacent area of public open space within the private open space of the dwelling.
- 9.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 9.6. The reason for this conclusion is as follows:
- The urban nature and modest scale of the works,
 - The location of the site removed from any waterbodies and lack of any hydrological connectivity,
 - The lack of water services required to service the site and
 - Taking into account the screening report/determination by Cork City Council.

9.7. Conclusion

- 9.8. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 9.9. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Environmental Impact Assessment

- 10.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory

requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

11.0 Recommendation

11.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether demolition of a boundary wall to the side of a dwelling and construction of a new boundary wall enclosing an adjacent area of public open space within the private open space of the dwelling is or is not development or is or is not exempted development:

AND WHEREAS Ray Murphy requested a declaration on this question from Cork City Council and the Council issued a declaration on the 04th day of June, 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Ray Murphy referred this declaration for review to An Coimisiún Pleanála on the 27th day of June, 2025:

AND WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) demolition of a boundary wall to the side of a dwelling and construction of a new boundary wall enclosing an adjacent area of public open space within the private open space of the dwelling constitutes works;
- (b) the works constitute development pursuant to section 3 of the Planning and Development Act, 2000;
- (c) the development comes within the scope of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001;
- (d) The restrictions on exemptions outlined in Article 9 (1)(a)(x) are applicable in this instance.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the demolition of a boundary wall to the side of a dwelling and construction of a new boundary wall enclosing an adjacent area of public open space within the private open space of the dwelling is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Sarah O'Mahony
Planning Inspector

28th October 2025

Form 1 - EIA Pre-Screening

Case Reference	322885
Proposed Development Summary	Construction of a boundary wall to the side of the dwelling is or is not development and/or is or is not exempted development
Development Address	49 The Crescent, Broadale, Maryborough Hill, Co. Cork
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2.
	☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No

development under Article 8 of the Roads Regulations, 1994. No Screening required.	mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	State the Class and state the relevant threshold
☐ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	State the Class and state the relevant threshold

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____